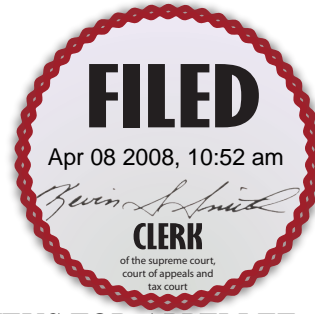


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DANIEL WOLFE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A03-0710-CR-474

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas Stefaniak, Jr., Judge
Cause No. 45G04-0506-FB-51

April 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Daniel J. Wolfe appeals the sentence imposed following his plea of guilty but mentally ill to two counts of class B felony robbery.¹

We affirm.

ISSUE

Whether Wolfe's sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

FACTS

On June 23, 2005, Wolfe entered a check-cashing business located in Highland. While pointing a handgun at the two employees, Wolfe demanded that they open the cash register. After Wolfe took some money out of the register, he fled in a vehicle. Wolfe then led several law enforcement officers on a chase, which ended with officers firing at Wolfe after he pointed his gun at them.

On June 24, 2005, the State charged Wolfe with two counts of class B felony robbery and one count of resisting law enforcement, as a class D felony. On July 1, 2005, the State filed an amended information, charging Wolfe with Count 1, robbery, as a class B felony; Count 2, robbery, as a class B felony; Count 3, resisting law enforcement, as a class D felony; Count 4, attempted battery, as a class C felony; Count 5, resisting law enforcement, as a class D felony; and Count 6, pointing a firearm at another person, as a class D felony. The State also alleged Wolfe to be an habitual offender.

¹ Ind. Code § 35-42-5-1.

The State and Wolfe entered into a plea agreement, whereby Wolfe agreed to plead guilty but mentally ill to Counts 1 and 2, in return for which the State agreed to dismiss all remaining counts and the habitual offender allegation. The parties agreed to a maximum sentence of fifteen years on each count, with the sentences to be served concurrently.

On July 12, 2007, the trial court took Wolfe's plea under advisement and ordered a pre-sentence investigation report ("PSI"). According to the PSI, Wolfe had been convicted of the following: two counts of class C felony escape; two counts of class D felony theft; possession of marijuana; possession of paraphernalia; obtaining a controlled substance by fraud; trespass; resisting law enforcement; conversion; disorderly conduct; mischief; and two counts of operating while intoxicated.

On July 30, 2007, the trial court accepted Wolfe's plea and held a sentencing hearing. The trial court found the following mitigating circumstances: 1) Wolfe's guilty plea and acceptance of responsibility; 2) Wolfe's mental illness;² and 3) Wolfe's cooperation with federal and state authorities in two unrelated cases. The trial court also found Wolfe's willingness to testify against a defendant in another case³ "relates to [Wolfe]'s character to want to do good when given an opportunity" (Tr. 67). The trial court found the following aggravating circumstances: 1) Wolfe violated the terms of his probation; 2) Wolfe's criminal history; and 3) correctional or rehabilitative treatment

² Wolfe has been diagnosed with paranoid schizophrenia and has received treatment sporadically since 2000.

³ Wolfe testified regarding a conspiracy to murder a judge, deputy prosecutor and a State witness.

would be provided best by commitment to a penal facility. Finding the aggravators outweighed the mitigators, the trial court imposed a sentence of two concurrent fifteen-year terms.

DECISION

Wolfe asserts that his sentence is inappropriate. We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden to "persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." *Anglemeyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

In determining whether a sentence is inappropriate, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Childress*, 848 N.E.2d at 1081. The advisory sentence for a class B felony is ten years.⁴ Wolfe received a sentence of fifteen years—the maximum pursuant to the plea agreement.

Regarding the nature of Wolfe's offense, the record discloses that Wolfe robbed a business by pointing a gun at two employees. Wolfe later led several law enforcement officers on a vehicular chase. The chase finally ended with Wolfe pointing his weapon at the officers, forcing the officers to draw their own weapons and fire on Wolfe, striking him in the arm.

⁴ Pursuant to Indiana Code section 35-50-2-5, "[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years."

As to Wolfe's character, Wolfe has an extensive criminal history and was on probation when he committed his offense. While recognizing Wolfe's mental illness, there is nothing in the record to indicate that Wolfe was unable to control his behavior due to his mental illness or did not understand the wrongfulness of his behavior.

Regarding Wolfe's guilty plea, Wolfe received a significant benefit when the State dismissed several charges against Wolfe as well as an habitual offender allegation. Thus, Wolfe's guilty plea is not a significant reflection of his character. As to Wolfe's prior cooperation with authorities and his "want to do good when given an opportunity," this must be juxtaposed with the escalation of Wolfe's criminal behavior, culminating in armed robbery.

Our review of the record does not convince us that Wolfe's sentence is inappropriate. Accordingly, we find no abuse of discretion in sentencing Wolfe to two fifteen-year concurrent terms.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.